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New York Updates Pay Frequency Law to Reduce Potential Liability for First Time Offenders

As we previously detailed here, beginning with the 2019 New York Appellate Division First Department decision in *Vega v. CM & Associates Construction Management*, which recognized a private right of action for non-exempt employees to institute private pay frequency claims, courts in New York have been inundated with lawsuits in which employees claimed that the manner in which they were paid was illegal under New York Law, *i.e.*, that they were paid less frequently than required under New York Labor Law ("NYLL") §191. Under NYLL §191, a "manual worker" must be paid on a weekly basis, whereas a "clerical and other worker" may permissibly be paid semi-monthly. The term "manual worker" has been interpreted by the New York State Department of Labor ("NYDOL") as a worker who spends more than 25% of his or her work time on tasks involving physical labor.

Since 2019, many employers, including several fashion and other retailers, have been sued by employees who claim that their work involves sufficient physical labor to qualify as "manual workers" and thus they should have received their pay on a weekly basis. In many cases, the question of whether an employee is a "manual worker" or a "clerical or other worker" requires a fact-intensive analysis, which has led to prolonged litigation in many of these cases.

As New York Labor Law allows for the recovery of liquidated damages and attorneys' fees, defending and resolving these claims can become very expensive for employers. In many cases, employers paid the full amount owed to employees on bi-weekly or semi-monthly pay days, but employees nonetheless allege that they are aggrieved and deprived of valuable interest by not receiving their paychecks on a weekly basis. Courts are now inundated with cases in which retail sales associates, restaurant waitstaff, health aides and other workers that have historically performed minimal physical work are now claiming to be manual laborers for this purpose.

In January 2024, the Appellate Division Second Department issued a decision in *Grant v. Global Aircraft Dispatch Inc.*, distinguishing its holding from that reached by the First Department, and concluding that there is no private right of action for these claims. Although many employers were optimistic at the time that the *Grant* decision might stem the tide of pay frequency lawsuits that emerged after *Vega*, this has not occurred and plaintiffs continue to bring these claims in courts with alacrity, particularly within the First Department (which includes the Bronx and Manhattan) and federal courts throughout the state. Federal courts have generally continued to follow *Vega* and declined to follow *Grant* with few exceptions, although some federal courts have stayed proceedings until the New York Court of Appeals, the State's highest court, reviews a pending appeal in the *Grant* case.

Recently, however, as part of the 2026 State budget, which Governor Kathy Hochul signed into law on May 9, 2025, the State Legislature agreed to reform pay frequency litigation by lowering the available damages for successful plaintiffs. Now, for a first-time violation, an employer will be liable for no more than 100% of lost interest for any late wage payment. This will perhaps disincentivize employees from bringing standalone pay frequency claims, especially where an employer has not been found to have violated NYLL § 191 previously, as the potential recovery (*i.e.*, lost interest) is significantly less than liquidated damages. Employers may still be liable for liquidated damages equal to 100% of untimely wages if they have previously been found to have violated New York's pay frequency laws, *i.e.*, when they are sued for the same relief following an earlier suit in which they were found to have violated NYLL § 191 for workers performing the same work.

While the incentive for employees to bring vexatious pay frequency claims has been reduced to some degree, employers may still see such claims tacked on to other complaints alleging violations of other elements of New York Labor Law.

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Additionally, it remains to be seen whether the Court of Appeals will weigh in on the question of whether employees even have a private right of action to bring these claims at all, which the pending appeal in the *Grant* case should clarify as well.

Employers should consider reviewing their pay practices with the guidance of employment counsel to determine whether they employ any workers who spend more than 25% of their work time on physical labor—or arguably do—and should thus potentially be paid on weekly basis. Larger employers with more than 1,000 employees in New York State may be eligible for a variance from the NYDOL to pay manual workers less frequently, and eligible employers may wish to consider applying for such an exemption even if they believe their workforce does not spend more than 25% of their time on physical labor. As of May 2025, 200 larger employers have obtained such variances from the NYDOL.

Key Contacts

The Morrison Cohen Labor & Employment team is available to assist employers in attaining compliance with all New York Labor Laws, including laws regarding pay frequency and other wage and hour and employment related matters.

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